

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 311 of 2003.

The New India Assurance Company Ltd.,
through its Divisional Manager,
Opposite Judge Court, Nainital Road,
Haldwani, (Nainital).

..... Appellant.

Versus

1.Samuel Munna Lal S/o late Bolter Munna Lal,
2.C. Sales S/o Shri Samuel Munna Lal,
3.C. Anjali D/o Shri Samuel Munna Lal,
4.Alen Raj S/o Shri Samuel Munna Lal,
C/o Natural Guardian Samuel Munna Lal,
R/o 1733 TAA Colony, Pant nagar,
5.Prem Prakash S/o Shri Mulridhar,
6.Mohd.Saddique S/o Kaloo,
R/o Punjabi Colony, Behari-District Bareilly.

..... Respondents.
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Sri Tanveer Alam Khan, learned counsel for the appellant.
Sri Naresh Pant, learned counsel for the respondent No.1.

Date: 31st Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred against the judgment and order dated 06.08.2003 passed by Motor Accident Claims Tribunal/Addl.District Judge, Udham Singh Nagar in the Motor Accident Claim Petition No.54 of 2002, whereby the claim petition of the claimants has been allowed for a compensation of Rs. 4,68,000/- against the Opp.party No.3- New India Insurance Company alongwith

interest at the rate of 8% per annum from the date of application till the date of final payment.

2- Brief facts giving rise to this appeal are that on 06.12.1999 at about 2.30 deceased Smt.Sahida Lal was going with her husband Samuel Munna Lal with the Scooter No. DDR 8291. When they were taking turn at Nangla Tri junction within the Police Station-Rudrapur, truck No. UP-25-5165, which was being driven rashly and negligently dashed against the Scooter due to which the deceased sustained injuries. She was taken to University Hospital for treatment where she declared dead by the doctors. The deceased was employed as teacher in Campus School and was getting Rs. 6245/-as monthly salary. It was alleged that the deceased Sahida Lal was 40 years old at the time of accident. The claimants filed the claim petition for compensation of Rs. 15,00,000/-against the opposite parties.

3- The opposite party Nos. 1 & 2, the owners of the offending truck, contested the case and denied the accident by their truck before the Tribunal. They further stated in their written statement that the truck in question was insured with the New India Insurance Company. The opposite party No.3 New India Insurance Company filed its separate written statement and denied the allegations of the claim petition. On the pleadings of the parties, the learned Tribunal framed necessary issues and after recording evidence allowed the claim petition accordingly.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Act and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have gone through the

material on record and perused the impugned judgment. The learned counsel for the appellant could not indicate that the application under Sec. 170 of the Motor Vehicles Act was moved before the Tribunal. The Tribunal has also not given any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***“even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle.”*** Thus is view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

(B.S.Verma,J.)

(P.C.Verma,J.)

P.Singh